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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/923,032	08/06/2001	Richard William Kubalek	15,454.1	8952

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EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 08/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/923,032

Applicant(s)

KUBALEK ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 16-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4-6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1 – 15, drawn to a liquid absorbent device comprising an outer cover, a first and second frangible line and a liquid absorbent device, classified in class 604, subclass 385.04.
- II. Claims 16 – 28, drawn to a method of making a feminine sanitary protection device, classified in class 156, subclass 196.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the liquid absorbent device can be made without forming a plurality of individual articles.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation between Examiner Sam Yao and Karl Sidor on August 5, 2003, a provisional election was made with traverse to prosecute the invention of Group I, claims 1 – 15. Affirmation of this election must be made by applicant in replying to this Office action. Claims 16 – 28 are withdrawn from further

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consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 – 6 and 8 – 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Balzar et al. (US 6,293,932).

The applied reference has a common inventor and assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this

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application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

With reference to claim 1, Balzar et al. (hereinafter "Balzar") discloses a liquid absorbent device comprising an outer cover having a central longitudinal axis, and including a top edge, a bottom edge, a first side edge and a second side edge, a first side section between the first side edge and the central longitudinal axis, and a second side section between the second the side edge and the central longitudinal axis (36), a first frangible line in the first side section of the outer cover (64), and a second frangible line in the second side section of the outer cover (66), a liquid permeable liner (12) and an absorbent medium (16) joined with the outer cover to form a liquid absorbent device, at least the liquid absorbent medium being located between the first frangible line and the second frangible line (figure 2), the liquid absorbent device being folded so the outer cover forms the exterior of the folded liquid absorbent device (figure 8) such that, upon removal of portions of the outer cover outboard the frangible lines and unfolding the liquid absorbent device, a remaining portion of the outer cover is adapted to form a liquid impermeable layer of the liquid absorbent device that includes the liquid permeable liner and the absorbent medium as set forth in figure 12.

As to claims 2 and 9, Balzar discloses a device further comprising a first joining element in the first side section, and a second joining element in the second side section (50) as set forth in col. 5, lines 57 – 61.

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Regarding claim 3, Balzar discloses a device wherein the first joining element and the second joining element join respective portions of the folded outer cover together as set forth in col. 5, lines 40 – 46 and in figure 8.

With respect to claim 4, Balzar discloses a device wherein each frangible line is in generally overlapping alignment with itself as set forth in figure 5.

Regarding claim 5, Balzar discloses a device wherein the first frangible line is between the first joining element and the central longitudinal axis, and the second frangible line is between the second joining element and the central longitudinal axis as set forth in figure 5.

As to claims 6 and 12, Balzar discloses a device further comprising a release strip (58) for the liquid absorbent device as set forth in col. 8, lines 37 – 52.

With respect to claim 8, Balzar discloses a feminine sanitary protection device, comprising: an outer cover having a central longitudinal axis, and including a top edge, a bottom edge, a first side edge and a second side edge, a first side section between the first side edge and the central longitudinal axis, and a second side section between the second side edge and the central longitudinal axis (36), means in the first side section (64) and in the second side section (66) for removing at least a portion of the first side section and at least a portion of the second side section from the outer cover, and a liquid permeable liner (12) and an absorbent medium (16) joined with the outer cover to form a liquid absorbent device, the liquid absorbent device being folded so the outer cover forms the exterior of the folded liquid absorbent device (figure 8) such that, upon removal of at least a portion of the first

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side section and at least a portion of the second side section from the outer cover and unfolding the liquid absorbent device, a remaining portion of the outer cover is adapted to form a liquid impermeable layer of the liquid absorbent device that includes the liquid permeable liner and the absorbent medium as set forth in figure 12.

With respect to claim 10, Balzar discloses a device wherein the liquid absorbent device with its outer cover is tri-folded as set forth in figure 8.

Regarding claim 11, Balzar discloses a device of claim 9 wherein the removing means (66) is between the joining means (50) as set forth in figure 5.

With reference to claims 13 and 14, Balzar discloses a device wherein the removing means includes a first frangible line in the first side section, and a second frangible line in the second side section wherein the frangible lines include perforations as set forth in col. 7, lines 19 – 26.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 7 – 8 and 15 rejected under 35 U.S.C. 103(a) as obvious over Moder et al. (US 5,827,251).

With respect to claims 1 and 8, Moder et al. (hereinafter "Moder") discloses a liquid absorbent device comprising an outer cover having a central longitudinal axis, and including a top edge, a bottom edge, a first side edge and a second side edge, a first side section between the first side edge and the central longitudinal axis, and a second side section between the second the side edge and the central longitudinal axis (60), a first frangible line (or means for removing a portion) in the first side section of the outer cover, and a second frangible line in the second side section of the outer cover (col. 2, lines 49 – 50), a liquid permeable liner and an absorbent medium joined with the outer cover to form a liquid absorbent device (col. 11, lines 28 – 39), at least the liquid absorbent medium being located between the first frangible line and the second frangible line (figure 3), the liquid absorbent device being folded so the outer cover forms the exterior of the folded liquid absorbent device (figure 3) such that, upon removal of portions of the outer cover outboard the frangible lines and unfolding the liquid absorbent device, a remaining portion of the outer cover is adapted to form a liquid impermeable layer of the liquid absorbent device that includes the liquid permeable liner and the absorbent medium as set forth in figure 7.

The difference between Moder and claim 1 is the provision that the absorbent device comprises a second frangible line.

It would have been obvious to one of ordinary skill in the art to modify the absorbent device of Moder to provide a second frangible line since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

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Further, Moder states that at least one closed in can be perforated (i.e. frangible). Therefore, Moder recognizes the benefit of perforating the sealed ends to allow for ease of opening. Moder's statement that at least one end is perforated does not explicitly exclude the second end from being perforated and may include the second end as well.

As to claims 7 and 15, Moder discloses the device further comprising a vaginal insertion device as set forth in col. 2, lines 32 – 44.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Michele Kidwell
Michele Kidwell
August 11, 2003

Glenn K. Dawson
GLENN K. DAWSON
PRIMARY EXAMINER